



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1459  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,387	01/22/2004	Dennis M. Vigil	12013/47103	2425
23838 7590 12/02/2008 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
EXAMINER BOUCHELLE, LAURA A				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
12/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/761,387

**Applicant(s)**

VIGIL ET AL.

**Examiner**

LAURA A. BOUCHELLE

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7, 9, 10, 12-14 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9, 10, 12-14 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/02)  
Paper No(s)/Mail Date 3/24/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigil et al (US 5746716) in view of Edwards (US 6009877). Vigil discloses a method of releasing fluid medicament into a vessel wall comprising the steps of providing an expanding member 16 having a plurality of dispensers 20, advancing the expanding member through the vessel to the site, moving the expanding member from a first configuration to a second configuration, and releasing fluid medicament through the dispensers into the vessel wall (Col. 3, lines 50-65, Col. 5, lines 17-30).
3. Claims 1, 10 differ from Vigil in calling for the dispensers to be provided in a single plane only. Edwards teaches a method for treating a body lumen including an expandable member 44 having dispensers 90 mounted on the expandable member. The method of using the device as taught by Edwards is similar to that of Vigil. Edwards teaches that the dispensers 90 are located in a single plane (see Fig. 14) to allow for treatment of a limited and precise area of the lumen while minimizing trauma to the lumen and the surrounding area (Col. 3, lines 36-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Vigil to include dispensers in a single plane only as taught by Edwards to minimize injury to the body lumen.
4. Claims 2, 3, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigil in view of Edwards in view of Rammler (WO 94/23787). Claims 2, 12, 21 differ from Vigil in

calling for the fluid medicament to inhibit the proliferation of smooth tissue growth. Claims 3, 13, 22 differ in calling for the fluid medicament to include a radioactive isotope. Rammler teaches a balloon catheter for delivery of drugs to a site in a vessel comprising the step of delivering a cell proliferation inhibitor to prevent restenosis of the region (Page 6, line 35). Rammler also teaches that the balloon catheter may be used to deliver a radioactive isotope to provide for better definition of the vessel wall under fluoroscopy (Page 8, line 31). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Vigil to include the steps of delivering a cell proliferation inhibitor or a radioactive isotope as taught by Rammler to treat a vessel wall.

5. Claims 4, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigil in view of Edwards in view of Goldberg et al (UUS 5480975). Claims 4, 14, 23 differ from Vigil in calling for the fluid medicament to stimulate production of collateral vessels. Goldberg teaches the use of a medicament that stimulates the production of collateral vessels to ameliorate hypoxic injury (Col. 2, lines 53-58). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Vigil to include the steps of delivering a medicament that stimulates the production of collateral vessels as taught by Goldberg to ameliorate hypoxic injury to tissues.

6. Claims 7, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigil in view of Edwards in view of Casscells et al (WO 9211872). Claims 7, 17, 26 differ from Vigil in calling for the fluid medicament to comprise a binder. Casscells teaches the use of a binder that binds to the vessel wall so that drug agents can enter the target cells and destroy proliferating cells (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at

the time of invention to modify the method of Vigil to include the steps of delivering a binder as taught by Casscells to allow drug agents to enter the target cells and destroy proliferating cells.

7. Claims 9, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigil in view of Edwards in view of Nabel et al (US 5328470). Claims 9, 19, 28 differ from Vigil in calling for the medicament to comprise a gene for gene therapy. Nabel teaches the use of medicaments comprising a gene for gene therapy to a localized region of vessel injury (Col. 5, lines 60-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Vigil to include the step of providing a medicament having a gene for gene therapy as taught by Nabel to treat a localized region of vessel injury.

#### ***Response to Arguments***

8. Applicant's arguments, see pages 5-6, filed 3/24/08, with respect to the rejection(s) of claim(s) 1, 10 under Vigil have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Vigil in view of Edwards.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

/L. A. B./  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763